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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,870	12/12/2003	William F. Leek	SIMP-51002/US0	1550
28554	7590	04/02/2009		
Vierra Magen Marcus & DeNiro LLP			EXAMINER	
575 Market Street, Suite 2500			CHAPMAN, JEANETTE E	
San Francisco, CA 94105				
ART UNIT		PAPER NUMBER		
3633				
MAIL DATE		DELIVERY MODE		
04/02/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/734,870

Applicant(s)

LEEK ET AL.

Examiner

Jeanette E. Chapman

Art Unit

3633

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11, 14, 15, 17, 18, 25 and 37-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11, 14, 15, 17, 18, 25 and 37-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 3/9/09, 12/30/08, 7/21/08
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Heirich
(33009260)

Heirich discloses a shearwall, comprising:

a central diaphragm 14, including

a top edge and a bottom edge generally defining a height of said central diaphragm, first and second ends 77/76, extending between the top and bottom edges, generally defining a width of said central diaphragm, and

a corrugated section 17 extending partially between said top edge and said bottom edge in between said first and second ends, said corrugated section 17 forming at least one corrugation, said at least one corrugation extending from said bottom edge and terminating at a position between said bottom edge and said top edge.

Claims 14-15, 25 are rejected under 35 U.S.C. 102(b) as being anticipated by DeRees
(4726166).

DeRees discloses a shearwall, comprising:

a central diaphragm, figures 2-7 including

a top edge and a bottom edge generally defining a height of said central diaphragm,

first and second ends extending between the top and bottom edges, generally defining a width of said central diaphragm, figure 6 and 3

a corrugated section 34 extending at least partially between said top edge and said bottom edge in between said first and second ends, said corrugated section forming at least one corrugation; at least one embossment at 112

15.

DeRees discloses a shearwall, comprising:

a central diaphragm, including

a top edge and a bottom edge generally defining a height of said central diaphragm, first and second ends, extending between the top and bottom edges, generally defining a width of said central diaphragm,

a corrugated section extending at least partially between said top edge and said bottom edge in between said first and second ends, said corrugated section forming at least one corrugation; and at least one stiffening lip adjacent element 112 in figures 7 and 8.

25.

DeRees discloses a shearwall comprising:

a central diaphragm having a top edge and a bottom edge defining a height of said central diaphragm, first and second end sections defining a width of the central diaphragm, see figures 1-7, mainly figure 2

and a front plane 44 and a rear plane 42 defining a depth of said central diaphragm, said central diaphragm including:

a pair of rear planar sections 42 extending at least part way between said top and

bottom edges and being adjacent, respectively, to said first and second end sections, said pair of rear planar sections having a surface residing generally in said rear plane, a pair of angled sections at 46 extending at least part way between said top and bottom edges and being adjacent, respectively, to said pair of rear planar sections, said pair of angled sections extending from said rear plane 42 toward said front plane at 44 and angling toward each other; see figure 6 also

a front planar section 44 extending at least part way between said top and bottom edges and being adjacent said pair of angled sections 46, said front planar section 44 having a surface residing generally in said front plane; and first and second chords 30/32 affixed one each to said first and second end sections.

Claims 17-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Flachbarth (3568388).

Flachbarth et al discloses a shearwall, comprising

a central diaphragm 1 having a height, width and depth, each being perpendicular to each other,

and a corrugation, figures 1-3 extending in the direction of said height of said central diaphragm;

first and second chords 62/60 affixed to a central diaphragm at opposed edges of said central diaphragm and extending in the direction of said height of said central diaphragm;

a sill plate 4 affixed to a bottom of the shearwall, said sill plate 4 having a footprint at least as large as said central diaphragm and said first and second chords together; and a channel 5/13 in which said central diaphragm resides.

18.

Fachbarth et al discloses a sill plate having a width greater than that of said channel.

Claim 42 is rejected under 35 U.S.C. 102(b) as being anticipated by Heirich (3300926).

Heirich discloses a shearwall comprising:

a first member 14 extending in the length direction between a top and bottom of the shearwall;

a second member 14' extending in the length direction between the top and bottom of the shearwall;

a central diaphragm 17 welded to the first and second members, the central diaphragm having a top edge and a bottom edge defining a height of said central diaphragm, first and second end sections defining a width of the central diaphragm, and a front plane and a rear plane defining a depth of said central diaphragm, said central diaphragm including:

a pair of rear planar sections at 70/77 extending at least part way between said top and bottom edges and being adjacent, respectively, to said first and second end sections, said pair of rear planar sections at 70/77 having a surface residing generally in said rear plane,

a pair of angled sections at 15 extending at least part way between said top and bottom

edges and being adjacent, respectively, to said pair of rear planar sections at 70/77, said pair of angled sections 15 extending from said rear plane toward said front plane adjacent 17 and angling toward each other, a front planar section at 17 extending at least part way between said top and bottom edges and being adjacent said pair of angled sections, said front planar section having a surface residing generally in said front plane, wherein the central diaphragm is first and second side structural members 116 formed one each on said first and second end sections; and first and second edge structural members 95/86 formed one each on said top edge and a bottom edge.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Heirich in view of Schaeffer (4292782).

Heirich discloses a shearwall comprising:

a first member 14' extending in the length direction between a top and bottom of the

shearwall, figure 2

the first member including at least a first corrugation; figure 2

a second member opposite end to 14'extending in the length direction between the top and bottom of the shearwall, the second member including at least a second corrugation, figure 2; and

a central section 14 but not of variable width along the length direction of the shearwall but for affixing the first member to the second member, the central section 14 is affixed to the first and second members. DeRees discloses a central section of variable width along the length direction. It would have been obvious to one of ordinary skill in the art to modify heirich to accommodate other building configurations.

Schaeffer discloses welding to join parts together for a corrugated panel. See column 2, lines 39-46. It would have been obvious to one of ordinary skill in the art to modify Heirich to join part together by welding in order to provide structural strength to the shearwall.

Claims 38-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeRees in view of Krotsch (4736566)

DeRees discloses a shearwall comprising:

a central diaphragm 34 having a top edge and a bottom edge defining a height of said central diaphragm, first and second end sections defining a width of the central diaphragm, and

a front plane at 44 and a rear plane at 42 defining a depth of said central diaphragm, said central diaphragm including:

a pair of rear planar sections at 42 extending at least part way between said top and bottom edges and being adjacent, respectively, to said first and second end sections, said pair of rear planar sections having a surface residing generally in said rear plane, a pair of angled sections at 46 extending at least part way between said top and bottom edges and being adjacent, respectively, to said pair of rear planar sections at 42, said pair of angled sections at 46 extending from said rear plane at 42 toward said front plane and angling toward each other, a front planar section at 44 extending at least part way between said top and bottom edges and being adjacent said pair of angled sections at 46, said front planar section at 44 having a surface residing generally in said front plane at 44; first and second edge structural members 30/32 formed one each on said top edge and a bottom edge.

Krotsch discloses a shear wall having first and second side structural members and first and second edge structural members 16/18, 20 formed on said first and second end sections and on the top edge and bottom edge section. The structural members are chords; and Krotsch discloses a shear wall having first and second side structural members 16/18 or 20 formed one each on said first and second end sections.

It would have been obvious to one of ordinary skill in the art to modify Derees to include the side structural members to provide a cohesive unit.

Claims 40-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeRees in view of Krotsch and further in view of Flachbarth.

40.

Flachbarth et al discloses a shearwall wherein the one of the first or second edge structural members sits within a channel.

41.

Flachbarth et al discloses the channel is mounted to a sill plate 4.

It would have been obvious to include the recited structure of Flachbarth to increase the usefulness of the shear wall in other structural members. As can be seen from the cited prior art shear wall structures having the above limitations are used in a variety of mechanical settings and conditions.

Applicant's arguments have been considered but are not deemed persuasive.

Applicant's arguments is moot regarding claim 11 given the new ground of rejection.

For claims 14-15, 25: applicant does not state or claim the type of shearwall meaning the use of the sidewall. However, Such a disclosure is immaterial given that DeRees and discloses the claimed features.

Regarding the rejection of claims 17-18; Applicant does not describe the material of the chords as disclosed on page 10 of the arguments or paragraph 46-47.

For claim 48: applicant does not specifically recite the recited configuration, meets and bounds, specific limitation of the front planar section.

For claim 37: De Rees discloses a variable width along the length direction of the shearwall

For claims 38-39, 40-41:

DeRees and Krotsch discloses the limitation of a shearwall and hence the same may be termed a shearwall; the environment or condition in which they are employed is immaterial to the claimed structure.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E. Jeanette whose telephone number is 571-272-6841. The examiner can normally be reached on Mon.-thursday, 8:30-6:00, every fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached at 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JEANETTE CHAPMAN/
PRIMARY EXAMINER
ART UNIT 3633
